

ORDER NO. 79787

IN THE MATTER OF THE PETITION
OF CORE COMMUNICATIONS, INC.
FOR INTERCONNECTION
AGREEMENT AMENDMENT
DISPUTE RESOLUTION.

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 8910

Before the Public Service Commission (“Commission”) in this matter is a Notice of Appeal and Appeal Memorandum filed by Verizon Maryland Inc. (“Verizon”) from the Proposed Order of Hearing Examiner in this case. Core Communications, Inc. (“Core”) and the Commission’s Staff (“Staff”) filed reply memoranda and Verizon filed an additional response.

As described in the Proposed Order, the issues in this case involve a dispute between Verizon and Core over the extent to which Core, a competitive local exchange carrier (“CLEC”), will be permitted access to information concerning Verizon’s unlit fiber optic cable (commonly referred to as “dark fiber”). In the Proposed Order, the Hearing Examiner described five issues that, to one degree or another, covered the unresolved issues between the parties. These include:

- The availability of a semi-annual inventory of available dark fiber;
- The ability to specify, submit and obtain query information from the Trunk Information and Record Keeping System (“TIRKS”);
- The ability to engage in engineering meetings with Verizon engineers to discuss dark fiber access issues;
- The availability of “entrance information” regarding the direction that fiber enters and exits Verizon wire centers; and

- The defined intervals [schedules] for Verizon to supply wire center maps and field surveys to Core.

In deciding the issues, the Hearing Examiner determined that in order to be competitive, Core must have access to information about Verizon's network. He further determined that the Commission addressed the appropriate extent of that access in its Letter Order Granting Verizon's Section 271 Application.¹ The Hearing Examiner notes that in its 271 Letter, the Commission directed Verizon to provide - upon the CLEC's request - central office and all related termination points *for all fiber facilities, for any office or group of offices at which the CLEC is considering ordering dark fiber*. Based upon that language, the Hearing Examiner understood the Commission's 271 Letter to require Verizon to inform CLECs (upon request) of the nature and extent of dark fiber resources at locations at which CLECs wish to employ dark fiber.² The Hearing Examiner further determined that, based upon the Commission's 271 Letter, it was also reasonable to imply a timeliness requirement in the Commission's instruction. Absent such a requirement, the provisioning of necessary information may be accurate but also may be too late to be useful.

In giving effect to the perceived timeliness requirement, the Hearing Examiner directed Verizon to fully respond to Core's dark fiber information requests within 30 calendar days of receiving those requests, unless the parties have agreed (or do agree) upon a different time period. Additionally, the Hearing Examiner approved Core's request for engineering meetings, in order to encourage the efficient use of time and to

¹ See Commission Letter Order - Conditional Approval of Verizon Maryland Inc.'s 47 U.S.C. § 271(c) Application in Case No. 8921, December 16, 2001.

² Proposed Order at 7.

avoid misunderstandings that might otherwise lead to needless litigation.³ The Hearing Examiner also directed Verizon to provide “entrance information” at the prescribed engineering meetings.⁴ The Hearing Examiner declined to direct that Verizon provide regular dark fiber inventories, maps or access to the TIRKs databases. Rather, Verizon was directed to provide Core with dark fiber information sufficient for the CLEC to utilize dark fiber at specific locations, as requested.⁵

On appeal, Verizon argued (i) that the engineering meetings required by the Hearing Examiner would be burdensome and unproductive – specifically, that Verizon engineers do not regularly have the type of blanket information that Core requests in any readily available format; (ii) that the Hearing Examiner ordered Verizon to provide “entrance information” for dark fiber at engineering meetings even though Core did not request such information until after the close of the record in the case; and (iii) that the Hearing Examiner erred in imposing a 30-day interval for all of Core’s requests for dark fiber information. Verizon contended that such an interval is reasonable for some requests but unreasonable for others.

In reply to Verizon’s appeal, Core emphasized that engineering meetings are an efficient way for Core and Verizon to exchange dark fiber information, that the “entrance information” is within the range of information Verizon has already committed to provide, and that the 30-day interval for Verizon to provide dark fiber information is reasonable and necessary. In its reply, Staff noted that the testimony in the case supports

³ *Id.* at 8.

⁴ *Id.*

⁵ *Id.* The Hearing Examiner cautioned, however, that if the CLEC found it difficult to obtain the specific dark fiber information that it needs by direct inquiry, then regular inventory reports, detailed fiber maps, or other mechanisms would be considered as a means of obtaining the information from Verizon necessary for the CLEC to compete. *Id.* at 8-9.

the Hearing Examiner's understanding and resolution of the issues. Staff noted that "[n]ot only was the type of information that Verizon is required to provide to Core at issue, but also how and in what manner Core is entitled to receive that information."⁶

Additionally, with regard to entrance information, Staff notes that its witness testified that Verizon should provide Core with an annual or semi-annual report with data describing the location and routes of the VMD [Verizon Maryland] fiber network or with maps depicting the routes and endpoints of the VMD network.⁷ Staff also noted that "[c]learly, entrance facilities would need to be part of any contiguous fiber network regardless of the application for which that network is placed in service."⁸

With regard to the propriety of engineering meetings, Staff noted that initially it had not recommended requiring Verizon to hold face-to-face engineering meetings with Core. However, in the year and a half after the close of the record, Staff noted that Verizon and Core had made little progress in exchanging information concerning Verizon's dark fiber facilities. Consequently, Core has made little progress towards supplying services to its customers who may have been interested in using planned fiber facilities. Thus, Staff concluded that the finding set forth in the Proposed Order would impose reasonable information requirements on Verizon that would move the information exchange process forward in an efficient manner. Staff also supported the Hearing Examiner's 30-day requirement for Verizon to provide CLEC requested dark fiber information.⁹

⁶ Staff Reply Memorandum at 2.

⁷ *Id.* at 2-3.

⁸ *Id.* at 3. (Footnote omitted).

⁹ *Id.* at 4.

Upon consideration of this matter, the Commission finds that the Proposed Order sets forth reasonable provisions with regard to engineering meeting requirements, requirements for providing entrance information and the 30-day interval for providing requested dark fiber information. We note in this regard that Core anticipates identifying the offices or groups of offices where it seeks to lease dark fiber from Verizon, before scheduling engineering meetings.¹⁰ With this clarification, the Commission adopts the Hearing Examiner's ruling and directs Verizon to cooperate with Core in scheduling engineering meetings relating to dark fiber information requests, provided that Core shall submit a proposed meeting agenda – in advance – identifying the offices or groups of offices subject to the meeting.

The Commission also affirms the Proposed Order with regard to the requirement that Verizon provide entrance information. The Commission is persuaded, as Staff expressed, that information regarding these entrances is essential to any CLEC that desires to construct a network using dark fiber UNEs and that entrance information would need to be part of any contiguous fiber network regardless of the application for which that network is placed in service.

Finally, with regard to the 30-day response interval for Core's dark fiber information requests, the Commission also affirms the Proposed Order of Hearing Examiner. The 30-day requirement is twice the time interval already agreed to by Verizon, and therefore does not in any way appear excessive or unreasonable. Furthermore, as prescribed by the Hearing Examiner, the 30-day response interval would apply unless the parties have agreed (or agree) upon a different time period for

¹⁰ Core Reply at 8.

provisioning specific information. The concerns raised by Verizon do not counter the reasonableness that the Commission's finds in this requirement.

IT IS THEREFORE, this 14th day of February, in the year Two Thousand and Five, by the Public Service Commission of Maryland, ORDERED:

(1) That Proposed Order of Hearing Examiner in this matter is AFFIRMED as set forth herein; and

(2) That Verizon Maryland Inc.'s Appeal of the Proposed Order of Hearing Examiner in this matter is hereby DENIED.

By Direction of the Commission,

O. Ray Bourland
Executive Secretary